

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket No. HWCA 20030260
)	
Clearwater Environmental)	
Management, Inc.)	
dba. Alviso Independent Oil)	
5002 Archer Street)	CONSENT ORDER
Alviso, CA 95002)	
EPA ID No.: CAL 000 161 743)	Health and Safety Code
)	Section 25187
Respondent.)	
_____)	

The State Department of Toxic Substances Control (Department) and
Clearwater Environmental Management, Inc. dba. Alviso Independent Oil (Respondent) enter
into this Consent Order (Order) and agree as follows:

1. Respondent generates, transfer, and/or stores hazardous waste at 5002 Archer Street, Alviso, California 95002 (Site).
2. The Department inspected the Site on November 19, 20, and 26, 2002.
3. The Department alleges the following violations:
 - 3.1. Respondent violated California Code of Regulations, title 22, sections 66279.10, subsection (a)(4) and 66270.30, subsection (a), and Hazardous Waste Facility Permit dated December 24, 1997 (Permit), Part II, Special Condition II-24 in that on or about January 18 and August 13, 2002, Respondent failed to test incoming used oil for total halogens.
 - 3.2. Respondent violated California Code of Regulations, title 22, section

66270.30, subsection (a) and the Permit, Part I, Condition 6(b) and Part II, Special Condition #26 in that on or about February 11, 2002, Respondent accepted two loads of corrosive waste (D002), a waste not authorized under Respondent's Permit.

3.3. Respondent violated California Code of Regulations, title 22, section 66264.13, subsection (b) and the Permit Application dated January 14, 1997, section III, Waste Analysis Plan (WAP) and Attachment III-1a, Description of Waste in that on or about October 26, 2002, Respondent failed to analyze waste antifreeze for flash point and drummed waste received at the facility for parameters identified in its WAP.

3.4. Respondent violated California Code of Regulations, title 22, section 66264.142, subsection (b) in that Respondent failed to adjust closure cost estimate for the years 2001 and 2002 using the most recent inflation factors adjustments due on July 21, 2001, 2002, and 2003.

3.5 Respondent violated California Code of Regulations, title 22, section 66264.143, subsection (b)(3) in that Respondent failed to make annual payments into its closure trust fund. Payment were due 30 days prior to anniversary date of trust on July 21, 2001, 2002 and 2003.

4. A dispute exists regarding the alleged violations.
5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.
6. Jurisdiction exists pursuant to H&SC, Section 25187.
7. Respondent waives any right to a hearing in this matter.
8. This Consent Order shall constitute full settlement of the violations

alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent admits to the violations alleged above.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1. Respondent shall pay the Department a total sum of \$50,000 in penalties as specified in paragraph 11 of this Order.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Robert Kou
Supervising Hazardous Substances Scientist
Department Of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended

changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and

its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for

injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 10.16 in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Respondent shall pay the Department a total sum of \$50,000 in penalties. The penalties shall be paid in four (4) equal installments of \$12,500 each. Payments are due and payable on: July 1, 2004, October 1, 2004, January 1, 2005, and April 1, 2005. Any installment payment which is received by the Department after the 15th day of the payment month in which it is due is subject to a penalty in the amount of \$750.00, which penalty shall be paid by Respondent no later than the due date of the next installment payment. If Respondent fails to make a full installment payment within thirty (30) days of its due date, then the

Department, at its option, may declare the entire balance of the outstanding penalties immediately due and owing. If Respondent fails to make any payment timely as provided above, Respondent agrees to pay interest thereon at the rate established pursuant to H&SC, Section 25360.1. Respondent further agrees to pay all costs and attorney's fees incurred by the Department in pursuing the collection of any sums the payment of which becomes delinquent hereunder. Respondent's checks shall be made payable to Department of Toxic Substances Control and shall be delivered, together with a payment Voucher in the form set forth in Exhibit 1 attached hereto and incorporated herein by reference, to the Department at the following address:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st. Floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mehdi Nobari
Supervising Hazardous Substances Scientist
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, California 91201

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs

incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated:6/30/2004

ORIGINAL SIGNED BY RESPONDENT
Signature of Respondent's Representative

Dated:7/1/2004

ORIGINAL SIGNED BY ROBERTO KOU
Roberto Kou, Unit Chief
Statewide Compliance Division